09/769,199   MS163086.1

REMARKS

Claims 1-46 are currently pending in the subject application and are presently under consideration. Claims 1, 2, 7-11, 32, 33, 35-38, and 44-46 have been amended herein. Such amendments are cosmetic in nature and not intended to alter the scope of these claims. Claim 39 has also been amended, wherein such amendment is entered to incorporate the limitations of objected-to claim 41. Claims 41 and 43 have been cancelled herein. A clean version of all pending claims is found at pages 2-10. Applicants' representative notes with appreciation the Examiner's indication that claims 8 and 20 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicants' representative respectfully reserves the right to do so at a later date. However, such amendments are not presently believed to be necessary in view of the comments herein.

Applicants' representative acknowledges the Examiner's indication that should claim 1 be found to be allowable, that claim 31 would be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. Applicants' representative however contends that claim 1 and claim 31 are distinguishable on the grounds that claim 1 is a system claim, and claim 31 is a "means for" claim that falls within the ambit of 35 U.S.C. §112¶6. Consequently, claims 1 and 31 are not duplicates of one another and thus no issue of double patenting arises.

Favorable consideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I.   Rejection of Claim 45 Under 35 U.S.C. §101

Claim 45 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. It is respectfully requested that this rejection be withdrawn for at least the following reason. The present invention as recited in the subject claims produces useful, concrete, and tangible results. A data packet is statutory subject matter for the purposes of 35 U.S.C. §101. A data packet for transmission between two processes is directed at computer usage as clearly stated within the specification. Accordingly, this rejection should be withdrawn.

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II.   Rejection of Claims 1-7, 9-19, 21-40, 42 and 46 Under 35 U.S.C. §102(e)

Claims 1-7, 9-19, 21-40, 42, 44 and 46 stand rejected under 35 U.S.C. §102(e) as being anticipated by Worley, *et al.* (US 6,651,190). It is respectfully requested that this rejection be with drawn for at least the following reasons. With regards to claims 39-43, independent claim 39 has been amended to incorporate the limitations of objected-to claim 41. Regarding the remainder of the rejected claims, Worley, *et al.* does not disclose each and every element of applicants' invention as claimed.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

Particularly, and as described in more detail below, Worley, *et al.* does not disclose, teach, or suggest *obtaining first information related to a local host computer* and *performing at least one test associated with the local host computer in order to obtain at least one test result according to the first information* within *a diagnostic software tool* as recited in independent claims 1, 13, 24, 31, and 32. Furthermore, Worley, *et al.* does not disclose a *diagnostic component* as claimed within independent claims 44, 45, and 46. The present claimed invention discloses a system and/or methodology that facilitate automatic diagnosis of network problems relating to a computer. Conventional network diagnosis requires a plurality of tools with which an unsophisticated user is not familiar. Also, command-line interfaces can be provided, wherein a user is required to enter in particular commands to determine specific information relating to a host computer and/or network. Due to complexity of networks, however, much information may need to be obtained in order to determine a nature of a particular network and/or computer problem. The subject invention as recited in these claims provides a software tool that can automatically *obtain information related to a host computer*, and thereafter utilizes such information to *perform a test according to the information*. The present invention also provides a software tool that includes *a*

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diagnostic component that determines at least one attribute associated with a networked computer system. This diagnostic component is resident within a software tool, and thus does not require a user to employ command-line entries to determine attributes associated with a computer network.

In contrast, Worley, *et al.* does not disclose *a diagnostic software tool* that *obtains first information related to a local host computer* and *performs at least one test associated with the local host computer in order to obtain at least one test result according to the first information.* Nor does Worley, *et al.* disclose, teach, or suggest *a diagnostic component that determines at least one attribute associated with a networked computer system.* Particularly, Worley, *et al. nowhere* discloses any software tool that is employed for diagnostic purposes. Rather, Worley, *et al.* teaches a hardware system utilized for remote access to a host computer that is independent of the host computers' network, power supply, and operating system. The hardware system includes a microcontroller/processor that is connected to a host computer through various input/output connections. The interconnection of the microcontroller/processor and the host computer is accomplished by utilizing embedded interface routines and/or interface software. *See* col. 4 lines 56-60. This interface software, however, is not employed for *diagnostic* purposes – it is simply utilized to enable access to the host computer *via* the hardware system. After access had been obtained, a sophisticated technician can initiate procedures to facilitate diagnosis of problems associated with the host computer. *See* col. 5, lines 56-57. Benefits of the invention disclosed in Worley, *et al.* include enabling a technician to access a network from the host computer without having to be physically present at the host computer. All *diagnostic* procedures, however, must be initiated by a technician and not by *a diagnostic component that determines at least one attribute associated with a networked computer system* as recited in independent claims 44, 45, and 46.

Moreover, nowhere does Worley, *et al.* disclose, teach, or suggest *performing a test... to obtain at least one test result according to first information... obtained by a diagnostic software tool.* As stated above, Worley, *et al.* does not disclose any sort of diagnostic software whatsoever. Rather, Worley, *et al.* provides network access to a technician who can then initiate network tests. "Direct access to the local network helps

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a technician decide whether the local area network the host computer is connected to is having problems." *See* col. 5, lines 56-59. Furthermore, it is not disclosed that these tests are performed *based upon information obtained by a diagnostic software tool.*

Worley, *et al.* does not disclose each and every element of independent claims 1, 13, 24, 31, 32, 44, 45, and 46 (and claims 2-7, 9-12, 14-19, 21-23, 35-30, and 33-40 which respectively depend therefrom). Independent claim 39 (and all claims that depend therefrom) has been amended to incorporate the limitations of objected-to claim 41. Accordingly, this rejection should be withdrawn.

III.   Conclusion

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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